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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TERESA DYKZEUL,

Plaintiff,

vs.

CHARTER COMMUNICATIONS Inc.,

Defendant.

Case No. 2:18-cv-05826 DSF (GJSx)

**STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1 B. GOOD CAUSE STATEMENT

2 This action is likely to involve valuable research, development, commercial,
3 financial, technical and/or proprietary information for which special protection
4 from public disclosure and from use for any purpose other than prosecution of this
5 action is warranted. Such confidential and proprietary materials and information
6 consist of, among other things, confidential business or financial information,
7 information regarding confidential business practices, or other confidential
8 research, development, or commercial information (including information
9 implicating privacy rights of third parties), information otherwise generally
10 unavailable to the public, or which may be privileged or otherwise protected from
11 disclosure under state or federal statutes, court rules, case decisions, or common
12 law. Accordingly, to expedite the flow of information, to facilitate the prompt
13 resolution of disputes over confidentiality of discovery materials, to adequately
14 protect information the parties are entitled to keep confidential, to ensure that the
15 parties are permitted reasonable necessary uses of such material in preparation for
16 and in the conduct of trial, to address their handling at the end of the litigation, and
17 serve the ends of justice, a protective order for such information is justified in this
18 matter. It is the intent of the parties that information will not be designated as
19 confidential for tactical reasons and that nothing be so designated without a good
20 faith belief that it has been maintained in a confidential, non-public manner, and
21 there is good cause why it should not be part of the public record of this case.

22 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

23 The parties further acknowledge, as set forth in Section 12.3, below, that this
24 Stipulated Protective Order does not entitle them to file confidential information
25 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
26 and the standards that will be applied when a party seeks permission from the court
27 to file material under seal.
28

1 There is a strong presumption that the public has a right of access to judicial
2 proceedings and records in civil cases. In connection with non-dispositive motions,
3 good cause must be shown to support a filing under seal. *See Kamakana v. City*
4 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
5 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
6 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
7 orders require good cause showing), and a specific showing of good cause or
8 compelling reasons with proper evidentiary support and legal justification, must be
9 made with respect to Protected Material that a party seeks to file under seal. The
10 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
11 does not—without the submission of competent evidence by declaration,
12 establishing that the material sought to be filed under seal qualifies as confidential,
13 privileged, or otherwise protectable—constitute good cause.

14 Further, if a party requests sealing related to a dispositive motion or trial,
15 then compelling reasons, not only good cause, for the sealing must be shown, and
16 the relief sought shall be narrowly tailored to serve the specific interest to be
17 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
18 2010). For each item or type of information, document, or thing sought to be filed
19 or introduced under seal in connection with a dispositive motion or trial, the party
20 seeking protection must articulate compelling reasons, supported by specific facts
21 and legal justification, for the requested sealing order. Again, competent evidence
22 supporting the application to file documents under seal must be provided by
23 declaration.

24 Any document that is not confidential, privileged, or otherwise protectable in
25 its entirety will not be filed under seal if the confidential portions can be redacted.
26 If documents can be redacted, then a redacted version for public viewing, omitting
27 only the confidential, privileged, or otherwise protectable portions of the document,
28 shall be filed. Any application that seeks to file documents under seal in their

entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: *Teresa Dykzeul v. Charter Communications, Inc.*, Case No. 2:18-cv-05826 DSF (GJSx).

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a

1 party to this Action but are retained to represent or advise a party to this Action and
2 have appeared in this Action on behalf of that party or are affiliated with a law firm
3 that has appeared on behalf of that party, and includes support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.

9 2.13 Professional Vendors: persons or entities that provide litigation
10 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL.”

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the
24 trial judge. This Order does not govern the use of Protected Material at trial.

25 4. DURATION

26 Once a case proceeds to trial, information that was designated as
27 CONFIDENTIAL or maintained pursuant to this protective order used or
28 introduced as an exhibit at trial becomes public and will be presumptively available

1 to all members of the public, including the press, unless compelling reasons
2 supported by specific factual findings to proceed otherwise are made to the trial
3 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
4 “good cause” showing for sealing documents produced in discovery from
5 “compelling reasons” standard when merits-related documents are part of court
6 record). Accordingly, the terms of this protective order do not extend beyond the
7 commencement of the trial.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection
11 under this Order must take care to limit any such designation to specific material
12 that qualifies under the appropriate standards. The Designating Party must
13 designate for protection only those parts of material, documents, items or oral or
14 written communications that qualify so that other portions of the material,
15 documents, items or communications for which protection is not warranted are not
16 swept unjustifiably within the ambit of this Order.

17 Mass, indiscriminate or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber the case development process or to
20 impose unnecessary expenses and burdens on other parties) may expose the
21 Designating Party to sanctions.

22 If it comes to a Designating Party’s attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or

1 produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic
4 documents, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), that the Producing Party affix at a minimum, the legend
6 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
7 contains protected material. If only a portion of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s)
9 (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be
14 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
15 documents it wants copied and produced, the Producing Party must determine
16 which documents, or portions thereof, qualify for protection under this Order.
17 Then, before producing the specified documents, the Producing Party must affix the
18 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
19 portion of the material on a page qualifies for protection, the Producing Party also
20 must clearly identify the protected portion(s) (e.g., by making appropriate markings
21 in the margins).

22 (b) for testimony given in depositions, that the Designating Party
23 identifies the Disclosure or Discovery Material on the record, before the close of
24 the deposition all protected testimony.

25 (c) for information produced in some form other than documentary and
26 for any other tangible items, that the Producing Party affix in a prominent place on
27 the exterior of the container or containers in which the information is stored the
28 legend “CONFIDENTIAL.” If only a portion or portions of the information

warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a

1 Receiving Party must comply with the provisions of section 13 below (FINAL
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
27 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
28 will not be permitted to keep any confidential information unless they sign the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
2 agreed by the Designating Party or ordered by the court. Pages of transcribed
3 deposition testimony or exhibits to depositions that reveal Protected Material may
4 be separately bound by the court reporter and may not be disclosed to anyone
5 except as permitted under this Stipulated Protective Order; and

6 (i) any mediator or settlement officer, and their supporting personnel,
7 mutually agreed upon by any of the parties engaged in settlement discussions.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order
16 to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall
18 include a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this Action
28 to disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party’s confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
4 writing the Designating Party of the unauthorized disclosures, (b) use its best
5 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of
7 this Order, and (d) request such person or persons to execute the “Acknowledgment
8 and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the Receiving Parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order that provides for
16 production without prior privilege review. Pursuant to Federal Rule of Evidence
17 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
18 of a communication or information covered by the attorney-client privilege or work
19 product protection, the parties may incorporate their agreement in the stipulated
20 protective order submitted to the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order, no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in
27 this Stipulated Protective Order. Similarly, no Party waives any right to object on
28

1 any ground to use in evidence of any of the material covered by this Protective
2 Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material
5 may only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party's request to file Protected Material
7 under seal is denied by the court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 After the final disposition of this Action, as defined in paragraph 4, within 60
11 days of a written request by the Designating Party, each Receiving Party must
12 return all Protected Material to the Producing Party or destroy such material. As
13 used in this subdivision, "all Protected Material" includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of the
15 Protected Material. Whether the Protected Material is returned or destroyed, the
16 Receiving Party must submit a written certification to the Producing Party (and, if
17 not the same person or entity, to the Designating Party) by the 60 day deadline that
18 (1) identifies (by category, where appropriate) all the Protected Material that was
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any
20 copies, abstracts, compilations, summaries or any other format reproducing or
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel
22 are entitled to retain an archival copy of all pleadings, motion papers, trial,
23 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
24 and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective
27 Order as set forth in Section 4 (DURATION).

28 ///

1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5
6 Dated: February 11, 2019

MORGAN, LEWIS & BOCKIUS LLP

7
8 By: /s/
9 Samson C. Huang
10 Attorney for Defendant
11 CHARTER COMMUNICATIONS,
12 INC.

13
14 Dated: February 11, 2019

CHURCH STATE COUNCIL

15 By: /s/
16 Alan J. Reinach
17 Jonathon S. Cherne
18 Attorneys for Plaintiff

19
20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21
22 DATED: February 25, 2019

23 

24 GAIL J. STANDISH
25 UNITED STATES MAGISTRATE JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on _____, 2019, in the case of *Teresa Dykzeul v. Charter*
8 *Communications, Inc.*, Case No. 2:18-cv-05826 DSF (GJSx). I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this action. I hereby appoint _____ [print or type full
19 name] of _____ [print or type full
20 address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____